

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 In re No. C-07-3715 MMC
12 RICHARD L. HATFIELD, No. C-07-3716 MMC
13 Debtor

/ **ORDER AFFIRMING DECISION OF
BANKRUPTCY COURT**

16 In re
17 ALLIANCE FINANCIAL CAPITAL
18 HOLDINGS, INC.,
19 Debtor

/

21 Appellant Jennifer M. Moore's ("Moore") has filed a notice of appeal in each of the
22 above-titled actions; by each such notice she appeals the decision, issued June 26, 2007
23 by the United States Bankruptcy Court, Northern District of California, to dismiss the
24 underlying bankruptcy actions pursuant to settlement.¹

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27 ¹ Although separately filed, the two underlying bankruptcy actions were related by
28 the Bankruptcy Court on January 11, 2007, (see Record on Appeal from Dismissal of
Involuntary Petition in Case No. 07-30031 ("Hatfield ROA") Doc. 2), and proceedings were
conducted jointly, (see, e.g., *id.* Doc. 12 (Order continuing status conference with respect to
both actions)).

1 Before the Court are Moore's briefs in support of her notices of appeal. Appellees
 2 First Trust Corporation fbo Richard L. Spees, First Trust Corporation fbo J.D. Erickson, and
 3 George Rnjak (collectively, "Petitioners"), have filed a notice of non-participation in each
 4 case. Neither appellee/debtor Richard L. Hatfield ("Hatfield"), nor appellee/debtor Alliance
 5 Financial Capital Holdings, Inc. ("AFCH"), has filed a response.

6 **BACKGROUND**

7 Moore and Hatfield lived together for approximately thirteen years, during which time
 8 they founded and operated Alliance Financial Capital, Inc. ("AFC"), a factoring business.²
 9 (See Hatfield ROA Doc. 3 ¶ 4.) Moore and Hatfield separated in 2001, and, in subsequent
 10 proceedings regarding the division of their property, the state court determined Moore and
 11 Hatfield owned equally the property accumulated while they were together, including AFC.
 12 (See id.) Petitioners are holders of promissory notes issued by AFCH. (See id. Doc.13
 13 Cooper Decl. ¶ 1.)

14 On January 8, 2007, Petitioners filed an involuntary petition for bankruptcy against
 15 Hatfield, (see Hatfield ROA Doc. 1), and a separate involuntary petition against AFCH, (see
 16 Record on Appeal from Dismissal of Involuntary Petition in Case No. 07-30030 ("Alliance
 17 ROA") Doc. 1); each of said petitions was filed pursuant to Chapter 7 of the Bankruptcy
 18 Code. As noted, the two bankruptcy actions were related by the Bankruptcy Court on
 19 January 11, 2007. (See Hatfield ROA Doc. 2.) On February 1, 2007, Hatfield filed an
 20 answer to the involuntary petition, (see id. Doc. 4); AFCH did not file an answer, (see
 21 Alliance ROA Doc. 21). On February 2, 2007, the Bankruptcy Court suspended the
 22 bankruptcy proceedings, pursuant to 11 U.S.C. § 305 ("§ 305"), "to permit settlement
 23 //

24 //

25 //

27 ² "Factoring involves the buying of accounts receivable at a discount and then
 28 attempting to collect on these accounts." U.S. v. Jordan, 49 F.3d 152, 154 n.1 (5th Cir.
 1995).

1 efforts in the state court to continue." (See id. Doc. 5 at 2:1-2.)³

2 Thereafter, on May 25, 2007, Petitioners filed a motion to dismiss the two
 3 bankruptcy petitions, based on a settlement between "the Alleged Debtors [Hatfield and
 4 AFCH], affiliates of AFCH, the Petitioning Creditors and other similarly situated creditors,"
 5 which settlement had been approved in an oral order made by the state court on May 11,
 6 2007.⁴ (See id. Doc. 13 at 1-2.) On May 31, 2007, the state court issued a written order
 7 determining the settlement to be in good faith. (See id. Doc. 18 Ex. D.) Moore participated
 8 in the state court proceedings and asserted therein claims against Hatfield and others,
 9 including claims on behalf of AFCH and other corporate entities, but was not a party to the
 10 settlement. In determining the settlement to be in good faith, the state court dismissed
 11 Moore's "derivative" claims asserted on behalf of AFCH and other corporate entities. (See
 12 id.)

13 On June 22, 2007, the Bankruptcy Court conducted a hearing on Petitioners' motion
 14 to dismiss. (See id. Doc. 32.) The Bankruptcy Court granted the motion, and, in so doing,
 15 found the notice of the motion was sufficient, (see id. at 22:6-13), that the creditors and

16 ³ On January 29, 2007, in Bankruptcy Case No. 07-30031, Moore removed four
 17 state court actions to the Bankruptcy Court. (See Hatfield ROA No. 3 (Adversary No. 07-
 18 3011).) The first of said actions was filed August 21, 2003 by Moore against Hatfield; the
 19 second action was filed December 15, 2004 by Moore against Hatfield and AFCH, among
 20 others; the third action was filed January 26, 2005 by AFC against Moore and her counsel;
 21 and the fourth action was filed December 17, 2001 by Moore against Hatfield. (See id. at
 22 2:21-3:7.)

22 Also on January 29, 2007, Moore removed two state court actions in Bankruptcy
 23 Case No. 07-30030. (See Alliance ROA No. 3 (Adversary No. 07-3010).) The first of said
 24 actions was filed October 12, 2005 by Moore against Hatfield, AFCH, and approximately
 25 seventy other defendants, and the second action was filed April 13, 2006 by Jacqueline
 26 Jackson, a creditor of Hatfield and AFCH, against AFC, AFCH, and Hatfield. (See id. at
 27 4:4-18.)

28 By March 13, 2007, the Bankruptcy Court had remanded all of the above-referenced
 29 state court actions. (See Hatfield ROA No. 11 at 2:3-5 (noting remand of adversary
 30 proceedings 07-3010 and 07-3011 by separate order).) The order of remand is not the
 31 subject of the instant appeals.

32 ⁴ One day later, on May 26, 2007, Moore filed a motion to terminate the suspension
 33 of the Hatfield bankruptcy case and noticed her motion for hearing on the same date as
 34 Petitioners' motion to dismiss. Moore's motion is directed exclusively to her dissatisfaction
 35 with the terms of the settlement, (see id. Doc. 15), and the Bankruptcy Court appears to
 36 have considered Moore's motion concurrently with, and as an opposition to, Petitioners'
 37 motion to dismiss.

1 debtors were better served by the settlement, (see id. at 22:14-19, 23:3-7), and that "the
 2 interests of the parties are better served . . . with allowing these matters to . . . be resolved
 3 in state court," (see id. at 23:22-24). The Bankruptcy Court also noted:

4 That Ms. Moore doesn't receive any payment under the settlement of AFCH does
 5 not suggest that settlement is not the best approach, because the settlement
 6 deals with creditors of that alleged debtor. Her real interest, if any, is in the
 7 nature of an equityholder, which is, of course, subordinate to creditors.

8 (See id. at 22:20-25.) The Bankruptcy Court's oral rulings were memorialized in a written
 9 order issued June 26, 2007, wherein the Bankruptcy Court granted the motion and
 10 dismissed each of the petitions pursuant to § 305(a)(1). (See id. Doc. 27).

11 On July 19, 2007, Moore filed notices of appeal with respect to the dismissal of each
 12 of the bankruptcy petitions.

13 **LEGAL STANDARD**

14 A final order of a bankruptcy court is appealable to a district court. See 28 U.S.C.
 15 § 158(a)(1). In reviewing a final order of a bankruptcy court, a district court reviews the
 16 bankruptcy court's factual findings for clear error and its conclusions of law de novo. See
 17 Diamant v. Kasparian (In re Southern Cal. Plastics, Inc.), 165 F.3d 1243, 1245 (9th Cir.
 18 1999). Because dismissal under § 305 is discretionary, the bankruptcy court's decision to
 19 dismiss under § 305 should be reversed only upon an abuse of discretion. See In re
 20 Bailey's Beauticians Supply Co., 671 F.2d 1063, 1067 (7th Cir. 1982).

21 **DISCUSSION**

22 Moore contends dismissal under § 305 was improper because the settlement on
 23 which the dismissal was based did not treat equally Moore's interests with those of other
 24 creditors, notice of the hearing on the motion to dismiss was inadequate, and the
 25 settlement was contingent on the occurrence of future events, including the payment of
 26 settlement funds. Additionally, with respect to AFCH, Moore asserts the Bankruptcy Court
 27 should have entered a default based on AFCH's failure to submit a timely response to the
 28 petition.

29 Section 305, titled "Abstention," permits the court, "after notice and a hearing," to

1 dismiss or suspend proceedings in an action “at any time if . . . the interests of creditors
 2 and the debtor would be better served by such dismissal or suspension.” See 11 U.S.C.
 3 § 305(a). “Whether to dismiss or suspend under section 305(a)(1) is . . . a discretionary
 4 decision to be made on a case-by-case basis.” In re International Zinc Coatings &
 5 Chemical Corp., 355 B.R. 76, 82 (Bankr. N.D. Ill. 2006). Because abstention is “an
 6 extraordinary remedy,” see In re Eastman, 188 B.R. 621, 624 (9th Cir. BAP 1995),
 7 “dismissal is appropriate under § 305(a)(1) only in the situation where the court finds that
 8 both creditors and the debtor would be better served by a dismissal,” see id. (internal
 9 quotation and citation omitted).

10 Moore first contends dismissal was not in her interest, as a creditor of Hatfield, (see
 11 Opening Brief at 8:27-28), because she was not a party to the underlying settlement, and
 12 would not receive payment, whereas other creditors, parties to the settlement, would
 13 receive payment. Even assuming Moore were a creditor of Hatfield, Moore’s argument is
 14 unavailing. Dismissal under § 305 is appropriate “where the petitioning [creditor is]
 15 attempting to use the Bankruptcy Court as an alternative to proceeding with pending State
 16 Court litigation to resolve what is essentially a two-party dispute.” See In re Kass, 114 B.R.
 17 308, 309 (Bankr. S.D. Fla. 1990). Here, the Bankruptcy Court found the Hatfield
 18 bankruptcy case was “in the nature of a two-party dispute between [] Hatfield and his
 19 former spouse-like person” and that such dispute was “best dealt with in the ongoing state
 20 court action.” (See Hatfield ROA Doc. 32 at 23:8-13.); see also In re Kass, 114 B.R. at 309
 21 (holding dismissal under § 305 should be granted “where the Court finds that the petitioning
 22 creditors have adequate State law remedies”) (citation omitted)).⁵

23 Moore’s second argument, that notice of the dismissal hearing was inadequate,
 24 likewise is unpersuasive. On May 25, 2007, Petitioners’ filed a “Notice of Hearing on
 25 Motion to Dismiss Involuntary Petitions on Consent of Petitioning Creditors and Debtors,”

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 27 ⁵ To the extent Moore suggests dismissal was not in her interest as a general
 28 creditor of AFHC, Moore’s premise is faulty. Moore’s claims against AFHC were not those
 of a creditor; rather, as the Bankruptcy Court recognized, Moore’s interest was “in the
 nature of an equityholder.” (See Hatfield ROA Doc. 32 at 22:23-25.)

1 wherein petitioners noticed their motion to dismiss for hearing on June 22, 2007. (See
 2 Hatfield ROA Doc. 14.) Petitioners served such notice, along with the motion and
 3 supporting declarations, on Moore's counsel, as well as on counsel for Hatfield and AFCH,
 4 counsel for eight other individuals or entities, approximately twenty-five unrepresented
 5 creditors, and the United States Trustee. (See *id.*) The Bankruptcy Court found service
 6 had been effectuated "on everybody who has shown any interest in this case." (See *id.*
 7 Doc. 32 at 22:11-12.) Moore does not assert she was prejudiced in any way by the manner
 8 in which the hearing was noticed, nor that any particular interested party failed to receive
 9 notice. Under the circumstances presented, notice of the dismissal hearing was sufficient.
 10 See, e.g., *Buffington v. First Service Corp.*, 672 F.2d 678, 689-90 (8th Cir. 1982) (holding,
 11 where "interested persons" received notice, such notification satisfied notice requirement of
 12 § 305(a)(1)).

13 Moore next argues that the Bankruptcy Court should not have dismissed the petition
 14 because the settlement agreement was conditioned on payment of settlement funds and/or
 15 other future occurrences. Again, Moore's argument is unpersuasive. In the event the
 16 settlement agreement is breached, the injured party can seek recourse for such breach of
 17 contract in the appropriate forum. See *Hinduja v. Arco Products Co.*, 102 F.3d 987, 989-90
 18 (9th Cir. 1996) (holding both state and federal court had jurisdiction to enforce settlement
 19 agreement upon which bankruptcy dismissal was based); *see also In re Valdez Fisheries*
 20 *Dev. Ass'n, Inc.*, 439 F.3d 545, 549 (9th Cir. 2006) (holding, absent explicit retention of
 21 jurisdiction over settlement by bankruptcy court or court's incorporation of settlement terms
 22 in order of dismissal, "enforcement of the settlement agreement is for state courts").

23 Lastly, relying on § 303(h) and *In re Key*, 209 B.R. 737, 739 (10th Cir. BAP 1997),
 24 Moore argues that the Bankruptcy Court was required to enter an order for relief against
 25 AFCH, based on its failure to submit a timely response to the petition. Section 303(h)
 26 provides: "If the petition is not timely controverted, the court shall order relief against the
 27 debtor in an involuntary case under the chapter under which the petition was filed." See 11
 28 U.S.C. § 303(h). Despite such statute's use of what appears to be mandatory language,

1 however, the Court is not persuaded that the Bankruptcy Court automatically loses the
 2 authority to take any action other than entry of an order for relief. In particular, the Court
 3 notes that a debtor's failure to file a timely response is also addressed by Rule 1013 of the
 4 Federal Rules of Bankruptcy Procedure, which uses language similar to that of § 303(h).
 5 See Fed.R.Bankr.P. 1013(b) ("If no pleading or other defense to a petition is filed within the

6 time provided by Rule 1011, the court, on the next day, or as soon thereafter as
 7 practicable, shall enter an order for the relief requested in the petition.").⁶ The Advisory
 8 Committee Notes thereto nonetheless envision instances in which an order for relief will not
 9 be issued. See id. Advisory Committee Notes ("If an order for relief is not entered on
 10 default, dismissal will ordinarily be appropriate but the court may postpone definitive
 11 action."); see also 2 Collier on Bankruptcy ¶ 303.10[3] (Lawrence P. King ed., 15th ed. rev.
 12 1997) (discussing § 303(h) and Rule 1013(b); noting if answer not timely filed, answering
 13 party "may be estopped from contesting the involuntary petition at a later date") (emphasis
 14 added). Indeed, the case on which Moore relies does not foreclose all possibility of the
 15 Court's taking action other than an order for relief. See In re Key, 209 B.R. at 739 (noting
 16 bankruptcy court "ha[d] never acted on the [debtor's] untimely motion for leave to answer
 17 out of time"). Accordingly, the Court finds the Bankruptcy Court was not required to enter
 18 an order for relief against AFCH, particularly where, as here, the petitioning creditors did
 19 not seek such an order.

20 **CONCLUSION**

21 For the reasons stated above, the decision of the Bankruptcy Court is hereby
 22 **AFFIRMED.**

23 **IT IS SO ORDERED.**

24 Dated: March 31, 2008


 25 MAXINE M. CHESNEY
 26 United States District Judge

27 ⁶ Rule 1011 requires "defenses and objections to the petition" to be "filed and served
 28 within 20 days after service of the summons." See Fed.R.Bankr.P. 1011(b). The one
 exception to such rule is not applicable here. See id.